

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----X
11
12 DEPOSITION OF EDWARD J. ROSEN

13 New York, New York

14 February 19, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 28461
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5 February 19, 2010

6 9:35 a.m.
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8 Deposition of EDWARD J. ROSEN, held at
9 the offices of Cleary, Gottlieb, Steen &
10 Hamilton, LLP, One Liberty Plaza, New York, New
11 York, before Mary F. Bowman, a Registered
12 Professional Reporter, Certified Realtime
13 Reporter, and Notary Public of the State of New
14 York and New Jersey.
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2 was to do it as simply and clearly as possible
3 and not resurrect language that might have
4 been -- for other reasons raised issues in
5 people's minds for reasons unrelated to the
6 point that was intended to be conveyed here,
7 clarified here.

8 Q. By inserting the parenthetical, did
9 you mean anything different from what you say in
10 your declaration, paragraph 5 was documenting
11 the business deal?

12 MR. MORAG: Object to the form.

13 Q. In other words, did you mean anything
14 different in the language in the parenthetical
15 from the earlier language that had been removed?

16 MR. HUME: Objection, I think you are
17 really calling for him to interpret the
18 contract now.

19 MR. MAGUIRE: No, no, I am asking what
20 he meant at the time.

21 A. What I will say is that I meant to
22 express the thought reflected in the markup, but
23 I didn't parse, because I didn't have time to
24 parse the differences in the wording. And this
25 was intended to pick up everything in a shorter

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2 and more concise formulation.

3 Q. Do you know how much in value terms
4 this parenthetical picked up?

5 MR. MORAG: Objection to the form.

6 Q. In other words, do you know how much
7 property there actually was that was held to
8 secure obligations under such derivatives?

9 MR. HUME: The question is whether he
10 knows today?

11 Q. Did you know at the time what the
12 dollar amount of that was?

13 MR. MORAG: And I object, lack of
14 foundation.

15 Go ahead.

16 A. I did not know the precise number, no.

17 Q. Did you have a general understanding?

18 A. I would have assumed it was a
19 significant amount of, significant amount of
20 money. Lehman was a very significant, one of
21 the largest investment banks. They had a very
22 significant business, and I would have assumed
23 that with a significant business would come
24 significant customer property to margin the
25 proprietary and customer activities that were

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2 going on.

3 So the bigger it was, the more
4 concerned I was about it.

5 Q. Did you understand that the customer
6 margin was in the billions of dollars?

7 A. I didn't have specific knowledge of
8 it, but it wouldn't surprise me to hear that. I
9 expected it to be a large number.

10 Q. Did you understand what the
11 proprietary margin was that was in the billions
12 of dollars?

13 A. I would have expected it to be of that
14 kind of magnitude, but I didn't know exactly
15 what it was.

16 Q. Do you know whether the folks at Weil
17 had an understanding as to how much property was
18 picked up by the parenthetical?

19 MR. MORAG: Object to the form and
20 foundation.

21 A. All I'll say about that is that they
22 had more ready access to that information
23 through their client than we had.

24 Q. What about the trustee, do you know
25 whether the trustee had any knowledge about the

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2 amount of the property that was the subject of
3 that parenthetical?

4 A. I can't speak to the state of mind of
5 the trustee, but I assume that as part of this,
6 the trustee was looking at what was there.

7 Q. Is your answer the same with respect
8 to the creditors committee?

9 A. I've had no direct interaction with
10 them, the creditors committee, such that I can
11 recall.

12 MR. MAGUIRE: We will mark as
13 Exhibit 623 a document dated September 19,
14 2008, Bates stamped GCGSH0002699 through
15 700.

16 (Exhibit 623, document Bates stamped
17 CGSH0002699 through 700 marked for
18 identification, as of this date.)

19 A. Can I back up a second to your
20 previous question? In terms of what the trustee
21 and Weil knew about the amount of the margin,
22 they would have known -- they were copied on
23 e-mails which -- from OCC just in the context of
24 OCC that suggested that just the pays and
25 collects from -- for the Monday would have been

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on the order of several hundreds of millions of dollars, which would have suggested an extraordinarily large amount of positions and therefore margin associated with them.

So they could have inferred that it would be an extremely significant amount of margin.

Q. When you refer to the pays and collects, what are you referring to?

A. The accounts are marked on a periodic basis by the clearinghouse, and it was sort of what additional flows are coming in or going out between the clearinghouse and the clearing member as a result of the changes in the marks or the exercises of contracts or whatever other activity is being conducted in the account.

Q. And what's a pay?

A. Well, it depends on what your perspective is, but some amounts are paid by the clearinghouse to the clearing member, and there are amounts that are paid, so if you are receiving the funds, you are the collect, and if you are paying the funds, you're the pay.

Q. Do you know whether the trustee or

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2 Weil actually received any information
3 concerning pays or collects at the OCC prior to
4 the closing?

5 A. I believe they were copied on e-mail
6 correspondence from the OCC, but that may be a
7 misrecollection, but I believe there was a lot
8 of correspondence including another e-mail that
9 referred to a billion dollars and that confirmed
10 that OCC was going to transfer all of that to
11 Barclays, as we would have all expected.

12 Q. And did you receive any response to
13 Exhibit 623?

14 A. I don't have a clear recollection of a
15 specific response to this except that the SEC,
16 after this interim exchange of communications
17 regarding DTCC, stepped up to support the
18 transaction, so presumably if they had had a
19 problem, they would have raised it in connection
20 with their support of the transaction.

21 Q. We will mark as Exhibit 624 a document
22 Bates stamped DTCC 00126 through 00198.

23 (Exhibit 624, document Bates stamped
24 DTCC 00126 through 00198 marked for
25 identification, as of this date.)